

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4356 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYANTILAL L SHAH

Versus

STATE OF GUJARAT

Appearance:

PARTY IN PERSON

MR. S.J.DAVE, AGP For Respondents Nos.1 and 2.

NOTICE NOT RECD BACK for Respondent No. 3, 4, 5, 6,
7, 8, 9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 16/04/96

ORAL JUDGEMENT

By this petition, under Art. 226 of the Constitution of India read with Articles 14 and 16 thereof, the petitioner has prayed for quashing the Seniority Lists for the years 1980 and 1981 at Annexures L and R and also the circular and the memorandum dt.

20th August, 1962 and 16th April, 1963 at Annexures M and N respectively and further directing the respondents to determine the seniority of the petitioner in Group II by following proper principle and further directing the respondents to fix the rank of the petitioner in Group I in Class II. The petitioner, having retired with effect from 31st October, 1989, sought amendment in the prayer clause of the petition in respect of all consequential benefits i.e. difference in salary, pension and gratuity with interest as per revised seniority that may be fixed.

The petitioner has appeared as party in person. He sought permission to delete respondents nos. 3 to 24 and pursuance of the order dt. 11th April 1996, the names of respondents nos. 3 to 24 were ordered to be deleted.

I have heard Mr. Jayantilal L. Shah, the petitioner who appeared as party in person. I have also heard Mr. S.J. Dave, learned Assistant Government Pleader for respondents nos. 1 and 2.

Short facts giving rise to this petition may be stated shortly thus; the petitioner who was appointed as Clerk in the Revenue Department of Ex-Bombay State on October 25, 1949, was confirmed as such with effect from 1st April, 1956. In 1953, the petitioner had passed Sub Service Departmental Examination.

It is not in dispute that by the order dt. October 28, 1954, the Government decided to separate Treasury Establishment from Revenue Department at District Head Quarters. Later on in March, 1962, the Government decided to separate the Sub Treasury establishments from the District Land Revenue establishments under the administrative control of Agricultural and Lands Department, and to transfer such departments to the administrative control of the Finance Department, and the Director of Accounts and Treasuries with effect from 1st April, 1962. By the Government Resolution dt. 3rd March, 1962 at Annexure C, the Government directed that all the Aval Karkuns then working in the District Land Revenue Administration includes those working as Aval Karkuns in posts other than treasury Aval Karkuns and also substantive Aval Karkuns officiating in higher posts should be asked to indicate on or before the 30th June, 1962 at the willingness or otherwise should be absorbed in the treasury cadre in posts corresponding to their substantive post, subject to final selection by Government for such absorption.

It is not in dispute that the petitioner was working as Aval Karkun in the year 1962. It is also not in dispute that pursuant to the aforesaid Government Resolution at Annexure C, the petitioner had opted for Sub Treasury Department. It is also not in dispute that the petitioner came to be absorbed as Sub Treasury Officer with effect from 1st May 1963. The order in this regard dt. 1st May 1963 at Annexure E, is clear indicating such final absorption of the petitioner as Sub Treasury Officer. By the said order, it was also directed that the Sub Treasury Officers who were finally selected and absorbed in Treasury Cadre, were required to pass the Head Accountant's Examination or examination which may be prescribed by them thereafter within three years of the final absorption. The contention in the petition that the petitioner had accordingly cleared the Head Accountant's Examination within the prescribed period of three years, is not in the challenge by or on behalf of the respondents.

It appears that the respondent Government, in exercise of powers conferred by provisions of Article 309 of the Constitution of India, prescribed the rules relating to recruitment to various posts in the directorate of Accounts and Treasuries. In this context, the petitioner has relied on the Rules at Annexure F to the petition. The said rules came into force with effect from 1st April 1962. For the purposes of the said rules, the following posts in the said department were grouped into in all four groups i.e. in Group : I Senior Auditors in Local Audit Department, Inspectors of Stores Verification Organisation, Superintendents in various branches in the Directorate and Head Accountants in Treasuries; in Group II : Inspectors, Accountants and Noting Assistants in Insurance Branch, Sub-Treasury Officers and Deputy Accountants in Treasuries. Posts in Groups III and IV are not relevant for the purpose of this petition and as such the same is not referred to. As per Government Resolution dt. 8th April, 1954, copy of which is at Annexure K, the pay scales of various posts in the aforesaid groups were notified. The petitioner who was appointed as Sub Treasury Officer with effect from 25th July, 1962, was absorbed as Sub Treasury Officer with effect from 1st May, 1963 as per the aforesaid order dt. 1st May 1963 at Annexure F. It is not in dispute that the petitioner has passed the Revenue Qualifying Examination in April 1962 and Head Accountant's Examination in April, 1964. Thus, the petitioner had been working as Sub Treasury Officer in Group II in the pay scale of Rs.185-10-245 as per

Annexure E.

Second respondent by the circular dt. 27th May, 1976 declared provisional Seniority List of Group II Officers including one, the Sub Treasury Officer Group II; (2) Deputy Accountants Treasuries and (3) Noting Assistants/J.T.A 's. in Insurance Branch and (4) District Auditors, Grade- II. Provisional Seniority List of the above categories was prepared and objections were invited from the persons concerned, if any, within a period of sixty days from the date of issue of the said circular. Accordingly, the petitioner took objections regarding maintenance of his interse seniority with the Aval Karkuns of Revenue Department who had not cleared Revenue Qualifying Examination. According to the petitioner, he requested the respondents to fix up his position in Group I on the basis of the seniority list of the year 1976. It appears that the second respondent again prepared a provisional Seniority List on 13th June, 1980 showing the position as on 31st March, 1964. A copy of said seniority list is at Annexure L. The petitioner contends that the respondents fixed the seniority of all the employees who have been absorbed as a result of grouping on 1st April 1964 on the basis of continuous officiation except the Sub Treasury Officers who have cleared the Revenue Qualifying Examination. The petitioner submitted that in the seniority list at Annexure K, respondents nos. 3 to 24, who have now been deleted, have been shown juniors to the petitioner. Seniority List in respect of Sub Treasury Officers came to be finalised on 2nd March, 1977.

The grievance of the petitioner is that on 13th June, 1980, interse seniority list was prepared and published of the Sub Treasury Officers and Deputy Accountants who were working in Sub Treasuries as on 31st March, 1964. The said seniority list is at Annexure L to the petition, wherein the petitioner is shown junior to the deleted respondents nos. 3 to 24, giving the petitioner's rank at Sr.No. 35 in the said seniority list. It is the case of the petitioner that he requested the respondents to fix his position in Group I on the basis of a seniority as on 1976. However the said list at Annexure K came to be cancelled by respondent no.2. It appears that the aforesaid memorandum of seniority list dt. 20th August, 1962 came to be prepared among the Deputy Accountants who had passed the Head Accountant's Examination and particularly Sub Treasury Officers who had cleared Revenue Qualifying Examination on the basis of date of passing the said Revenue Qualifying examination. According to the rules, examination of Head

Accountants was not made applicable to the petitioner, nor he was required to clear the said examination. It is not in dispute that the rules with regard to examination of Head Accountants and that of Revenue Qualifying, were not the same, nor the petitioner had any opportunity to clear examination before being absorbed as Sub Treasury Officer. The seniority list of all the employees who had been absorbed at the result of grouping on 1st April, 1964, was prepared and fixed on the basis of continuous officiation except Sub Treasury Officers who had cleared Revenue Qualifying Examination. Thus, the respondents applied the memorandum dt. 20th August, 1962, a copy of which is annexed as Annexure M. The grievance of the petitioner is, therefore, that on account of this illegal and erroneous fixation of the seniority list and placing him below his juniors caused injustice and prejudice to him, inasmuch as he was not promoted in Group I post at the time when he was required to be promoted or when his juniors came to be promoted in a post of Group I. The petitioner has, thus, challenged the seniority lists at Annexures L and R and the consequential benefits.

Mr.S.J.Dave, learned AGP relying upon affidavit in reply argued that the seniority list of all other employees who had been absorbed as a result of grouping on 1st April, 1964, fixed on the basis of continuous officiation, except qualified Deputy Accountants who passed Head Accountant's Examination and Sub Treasury Officers who have passed the Revenue Qualifying Examination. In the submission of Mr. Dave, the learned AGP, the petitioner was placed below his junior on the basis of date of clearing examination and there is no illegality in fixation of seniority list of the petitioner, particularly placing him below his juniors. I am unable to appreciate and accept this contention raised on behalf of the respondents for the simple reason that the examination of the Head Accountants and that of Revenue Qualifying Examination were different and distinct and that the petitioner had cleared both the examinations and particularly the examination of Head Accountants within the prescribed period of three years from the date of his promotion, as Sub Treasury Officer. There is, therefore, no force in the submission of the learned AGP Mr. Dave that the seniority of the petitioner in placing him below his junior was correctly determined.

The petitioner had raised objections before the second respondent in respect of wrong fixation of his seniority. However the objections were turned down on 27th November, 1980 and the second respondent finalised

the said list on 18th March, 1981. The said circular is at Annexure Q. It is true that the petitioner preferred appeal on 6th April, 1981. However the said appeal was rejected on 9th June 1982, without giving any personal hearing to the petitioner. The said seniority list at Annexure R is a provisional list prepared on 3rd April, 1981 showing the position as on 4th September, 1971. The petitioner had also raised objections with regard to the seniority list which came to be prepared in 1981 and finalised on 11th March, 1985. However this grievance was not redressed. He, therefore, preferred the present petition.

Thus, placing the petitioner below his juniors in the seniority lists at Annexures L and R, wherein the petitioner has been shown at Sr.Nos.. 35 and 37 respectively is improper and illegal. It is, therefore, clear that the petitioner has not been given any due rank in the seniority lists at Annexures L and R, and thus deprived the petitioner from his due and fundamental right of equal opportunity in the matters of employment. The basis adopted by the respondents in fixation of the seniority is quite unjust and extraneous. Under the circumstances, the seniority lists at Annexures L and R deserve to be quashed.

The petitioner has now retired in the year 1989. Quashing of the seniority lists at Annexures L and R would, therefore, serve no purpose, instead the respondents should be directed to fix the seniority list of the petitioner properly having regard to the length of service test inasmuch as the petitioner had cleared the examinations of Revenue Qualifying and also that of the Head Accountants and the petitioner would, therefore, be entitled to the consequential benefits with regard to difference in salary, pension and gratuity, if his seniority was properly determined at the relevant time.

In the result, the petition is allowed. The respondents are directed to consider the case of the petitioner in light of the aforesaid observations in giving him due promotion according to due seniority of the petitioner at the relevant time and fixing his pay etc. and giving him due promotion at the stage when the next junior to the period was given such promotion in the higher cadre and difference in salary, pension and gratuity etc. be calculated accordingly and be paid to the petitioner. Rule is accordingly made absolute, with costs.
